IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 377 of 1994

with

CRIMINAL APPEAL No 503 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT and

MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RABARI RAIMAL MEKRAN

Versus

STATE OF GUJRAT

Appearance:

1. Criminal Appeal No. 377 of 1994

MR RS SANJANWALA for Appellants

MR BD DESAI, APP for Respondent No. 1

2. Criminal AppealNo 503 of 1994

MR BD DESAI, APP for Appellant

MR RS SANJANWALA for Respondents

CORAM : MR.JUSTICE H.R.SHELAT and
MR.JUSTICE J.R.VORA
Date of decision: 11/01/2000

COMMON ORAL JUDGEMENT : [Per: Vora, J.)

1. Both the appeals arise from common judgment and order. Appellants of Criminal Appeal No. 377 of 1994

are the respondents in Criminal Appeal No. 503 of 1994, came to be tried by Addl. Sessions Judge, Jamnagar, in Sessions Case No. 107/93 for the offences under Sections 302, 326, 323, 504, 506(2) read with Section 34 of the Indian Penal Code and under Section 135 (1) of the Bombay Police Act.

2. Facts leading to the prosecution are as under :

The incident took place on 28th March, 1993. One Samat Mala of village Singhch has filed a complaint before the police narrating that he himself was employed as Junior Chargeman in Singhch Salt works. Singhch Salt works with the co-operation of Forest Department, along the sea coast has grown cherry trees. To look after these trees, company had appointed one Mr. Harman Bharmal, uncle of the complainant, as watchman. The accused grazed their cattle in the above mentioned cherry trees damaging them and, therefore, a complaint was lodged against the accused in this respect. This case was pending on the date of the incident. On the date of the incident i.e. on 28.03.1993 complainant Samat Mala at about 12.30 at noon was returning to village Singhch for lunch from his work place. When he came near the entrance of village Singhch, all the three accused were present there and they had sticks with iron rings in their hands. They intercepted the complainant and asked whether the complainant still intended to report to the Police and the Forest Department, and with this all the

three started beating the complainant with the above mentioned sticks. They gave abuses and threats that the whole family of the complainant will be destroyed. In the meantime Mala Bharmal, father of the complainant came at the place of incident and he intervened to save the complainant free from the fight. Therefore, all the

accused started beating Mala Bharmal also. In the meantime, Bharmal Rama and Saga Mala came there and intervened and thereafter all the accused escaped from the place of incident. The complainant and his father were taken to Irwin Hospital, Jamnagar, for treatment, where complainant Samat Mala gave complaint in this case and investigation thereafter initiated. Father of the complainant Mala Bharmal during treatment died, and therefore, the charge against the accused is registered under Section 302 of the Indian Penal Code.

3. After the investigation was over, a charge sheet was submitted against the accused before the Judicial Magistrate, First Class at Lalpur, who inturn committed the case to the Court of Sessions at Jamnagar, where this case was registered as Session Case No. 107 of 1983 and the case was made over to the Court of Addl. Sessions Judge, for trial.

4. Learned Addl. Sessions Judge after recording of the evidence and hearing both the sides, came to the conclusion that the accused were responsible for the charge under Sections 326 of the Indian Penal Code for causing grievous injuries to Mala Bharmal, who ultimately

died and, therefore, the learned Addl. Sessions Judge convicted all the three accused for causing injuries to deceased Mala Bharmal under Section 326 of the Indian Penal Code read with Section 34 of the Indian Penal Code and sentenced the accused for the imprisonment of six years and the fine of Rs. 500 and in default, further three years simple imprisonment. Learned Addl. Sessions Judge convicted the accused under Section 326 read with Section 34 for inflicting injuries to injured Samat Mala and sentenced each of the accused for the imprisonment of 4 years and fine of Rs. 400, in default of paying fine, 4 months simple imprisonment. Each of the accused were also convicted under Section 506(2) read with Section 34 and each of the accused was sentenced to six months simple imprisonment and fine of Rs. 300/-, in default, one month simple imprisonment. Learned Addl. Sessions Judge further ordered that all the above mentioned sentences to run concurrently.

5. Against the above said decision of the Addl. Sessions Judge, which was pronounced on 14th February, 1994, in Session Case No. 107 of 1993, the accused have filed Criminal Appeal No. 377 of 1994 against their conviction and Criminal Appeal No. 503 of 1994 has been filed by the State against the acquittal of

the accused under Section 302 by the learned Addl. Sessions Judge.

6. Learned APP Mr. B.D. Desai appears on behalf of the State in both the Appeals was heard. Learned

Advocate Mr.R.S. Sanjanwala on behalf of the appellants in Criminal Appeal No. 377 of 1994 and for Respondents in Criminal Appeal No. 503 of 1994 i.e. for original accused was also heard.

7. So far as Criminal Appeal No. 503 of 1994 is concerned, learned APP Mr. Desai vehemently urged that there is oral evidence of injured witness Samat Mala and supporting eye witness Saga Mala. Both witnesses are natural witnesses and their evidence is unimpeachable. Mr.Desai further urged that medical evidence is supporting to above evidence and these circumstances necessarily establish the charge under Sec. 302 of the Indian Penal Code against all the 4 accused and, therefore, the learned Addl.Sessions Judge erred in acquitting the accused for the charge under Section 302 of the I.P.C. and erroneously concluded that instead of Section 302, the charge under Section 326 of I.P.C. is proved against the accused. Learned APP Mr. Desai has also drawn our attention to the evidence of complainant at Exh.19, evidence of Dr. S.D. Kalal at Exh.9, postmortem note prepared by Dr. S.D. Kalal, which is at Exh.11 and has argued that the intention of the accused from the oral evidence is clear that they inflicted injuries to cause death of deceased Mala Bharmal. According to Mr. Desai, there are fatal injuries as noted by the Doctor in the postmortem report and, therefore, the accused are required to be booked under Section 302 of the Indian Penal Code, instead of under Section 326 of IPC.

8. We have carefully considered the arguments on behalf of the State, and have scrutinised the record of the case. So far as the charge of Sec. 302 of IPC against the accused is concerned, learned Addl. Sessions Judge from the evidence on record, has preferred to convict the accused under Sections 326 of the IPC instead of convicting them under Sec. 302 of IPC for causing murder of Mala Bharma. So far as the injuries caused to the deceased Mala Bharmal is concerned, the relevant factor, to decide whether charge under Section 302 of the Indian Penal Code is established or charged to some lesser offence is established, would be the medical

evidence and the intention of the accused, which might have been established or proved through the evidence.

9. On careful scrutiny of the medical evidence i.e. evidence of Dr. Kalal, Exh.9 and postmortem note at Exh.11, it clearly transpires that these were the external injuries on the body of the deceased.

(1) 2 cm.x 1 cm. abrasion with brownish scab present on right arm outer aspect (deltoid region).

(2) Vertical 4.5 cm long x 1 cm. broad lacerated bone deep wound with abraded 1cm. broad skin margin present on skin of middle third of right leg with open fracture of underlying tibia bone with hemorrhage present.

(3) Vertical 2cm. long x 0.5 cm broad bone deep lacerated wound with 1cm. broad abraded skin margin present 3.5 cm to the left and behind injury No.2 at the same level, on medial surface of right leg with hemorrhage.

(4) 6cm. long x 2 cm broad skin just below and just back to injury No.3 shows two parallel railroad patterned purple coloured bruises each measuring 1/2 cm. broad with in between 1 cm. broad pale skin, present on right calf region, directed downward and backward.

(5) 7 cm. long x 2 cm. broad, transversely oblique purple homogenous bruise present on the right loin 5 cms above right crest, over the last rib region, extending upto midline of back.

(6) 3 cm x 2 cm grazed abrasion in midline at sacral region.

The Doctor further deposed that these were the internal injuries corresponding to the external injuries.

(1) Due to external injury no.2, there is transverse fracture of middle part of right tibia with irregular margins and hematoma in surrounding tissues.

(2) Due to external injury no. 3 & 4 underlying calf muscles are lacerated with ecchymosis present in soft tissues of lower half of right leg.

(3) Due to external injury no.5, posterior surface of right kidney shows transverse rupture of whole breadth of middle part perirenal and right retroperitoneal hemorrhage is present. Size of rupture of kidney is 3 cm x 0.75 cm deep. Right 12th rib and Rt. transverse process of first lumbar vertebra are fractured.

(4) Left fifth rib is fractured at lateral part with hemorrhage in soft tissues limited to vicinity of fracture site.

Injuries are antemortem in nature.

10. Dr. Kalal in his examination-in-chief has stated as an expert that there was a possibility to cause death by these injuries, but those injuries were not sufficient in the ordinary course to cause death.

11. Now intention of the accused is to be gathered from the oral evidence of witnesses and behaviour and conduct of the accused. The crucial question which arises whether there was any intention of the accused to cause death or to cause such bodily injuries as is likely to cause death or the accused know that the injuries inflicted are likely to cause death. Now reverting to the evidence of the eye witness i.e. complainant Samat Mala, it is clearly revealed in his evidence that the accused were found near the entrance of the village with sticks on their hands. The exchange of words i.e. the communication from the mouth of the accused is very relevant and that was regarding the reports made by the complainant to the Forest Department and to the Police against them for damaging cherry trees. This clearly indicates that the intention of the accused was to take revenge for the complaint filed for grazing of the cattle

and not to cause death of any person. More particularly, the deceased came afterwards on the scene of offence. When deceased appeared at the scene of offence, the quarrel had already started with the complainant and to rescue the complainant, the deceased, who was the father of the complainant, intervened and because he intervened, accused started beating him also.

12. Therefore, it is very clear from this evidence that the intention of the accused was to strike for taking revenge for the complaint made against him for grazing the cattle in the cherry trees. The father of

the complainant deceased was beaten only because he intervened. Medical evidence establishes that the injuries to the deceased was not inflicted by the accused on the vital part of the body, which is evident from the injuries as noted above mentioned by the Doctor in postmortem note. Doctor further opined that injuries were likely to cause death but were not sufficient to cause death in ordinary course. Appreciating this evidence as a whole in totality, no intention on the accused can be attributed that they gathered for murdering the deceased and their intention was to cause death or such bodily injuries as to cause death. Therefore, the learned Addl. Sessions Judge rightly held from the above evidence i.e. from the medical evidence as well as oral evidence that the intention of the accused which was revealed was only to strike and not to cause death and, hence, learned Addl. Sessions Judge came to the right conclusion that the charge under Section 302 of the Indian Penal Code was not brought home instead having regard to the injuries on the body of the deceased, the accused were convicted under Section 326.

12. In this view of the matter and for the above said reasons, the Appeal No. 503 of 1994 filed by the State against the conclusion of the learned Addl. Sessions Judge not convicting the accused under Section 302 of the Indian Penal Code and instead convicting the accused under Section 326 of the Indian Penal Code, has no substance and the same is required to be dismissed.

13. So far as Criminal Appeal No. 377 of 1994 is concerned, the same is filed by the original accused. On behalf of the appellants i.e. original accused, Mr. R.S. Sanjanwala, learned Advocate raised mainly following contentions, which were also pressed into

service by defence during trial.

(i) that the witnesses changed the scene of offence or there was contradiction regarding the scene of offence and, therefore, the benefit of doubt goes to the accused, learned Addl. Judge has failed to appreciate this vital aspect of the trial.

(ii) that the Investigating Agency did not collect the blood mud samples from the scene of offence and according to the accused, in ordinary course, there must be blood at the scene of offence. According to Mr. Sanjanwala, if there is no blood found at the scene of offence, the story of the prosecution case becomes improbable and the evidence of eye witnesses are required to be appreciated in this perspective. The learned Aaddl. Sessions Judge failed to appreciate the evidence in this manner.

(iii) that the injured witness as well as other witness i.e. Saga Mala at Exh.20, are interested witnesses because they are related to the deceased and their evidence ought not to have been believed by the learned Addl. Sessions Judge without independent corroboration to establish the charge.

13. On careful scrutiny of the evidence and going through the judgment of the learned Addl. Sessions Judge, it appears that the learned Additional Sessions Judge has come to the conclusion that any of the three above defences were not successfully available to the defense in view of the unimpeachable oral as well as medical evidence. So far as point Nos. 1 and 2 above are concerned, the learned Addl. Sessions Judge has simply reasoned his conclusion by saying that these are minor contradictions and in view of the positive evidence, those contradictions are required to be ignored. However, we have re-appreciated the evidence regarding point Nos. 1 and 2 above. So far as the scene of offence is concerned, in complaint, the complainant has mentioned the scene of offence to be the entrance of Rabari Vas while in the deposition, the complainant described the scene of offence to be the entrance of village. From this, it was before the trial court and before us also, vehemently urged that the scene of

offence is changed and that the prosecution has not established the genesis of the prosecution story and the accused are entitled to benefit of doubt. In this respect we have seen the evidence of Investigating Officer, which is at Exh.65 i.e. the deposition of witness Vikram D. Gohil. He has investigated the crime.

In his deposition and in cross examination, in para-56 on an answer to a question, he has specifically stated that the entrance of the village is situated where there is entrance point of Rabari Vas. Not only that the prosecution has produced a copy of the map of the scene of offence, which is at Exh.16. From this map also it is clear that the entrance of village is situated where the entrance of Rabari Vas is situated. From this, it is very clear that the place described as village entrance or entrance of the Rabari Vas, is the same place. Merely, the complainant has stated the entrance of village in the complaint and the same is described to be the entrance of Rabari Vas, would not really change the scene of offence. If the evidence of the complainant, map produced at Exh.16, and the evidence of the Investigating Officer is appreciated collectively, it is established that the incident has occurred at the entrance of village, which is also the entrance to the Rabari Vas and, therefore, on the defence of change of scene of offence, no benefit could be given to the accused. So far as point No.2 is concerned, it was vehemently argued before the trial court also that no blood mud sample was collected from the scene of offence. Investigating Officer in his deposition at Exh. 65 has admitted that when he reached at the scene of offence at about 6.00 in the evening, there was no blood found on the scene of offence. Correlating this with the change of scene of offence, it was further argued before us that in ordinary course, blood must have spilled from the body of the injured and deceased on the scene of offence. In this respect, the evidence of complainant at Exh.19 is

required to be taken into account in cross-examination, it appears that he was confronted with this fact and he has replied that his father was bleeding but only to the extent that his clothes were wet and clothes soaked the blood. It was further stated by the complainant in his deposition that no more blood was coming out of the body of his father. He further stated that he was also not much bleeding but his clothes were wet to some extent by blood stain. He also stated that his clothes were not seized by the police. This fact necessarily denotes that blood could not be spilled over the earth of the scene of

offence because the blood must have been absorbed by the clothes of the deceased and the injured and, therefore, there was possibility of spilling the blood on the scene of offence. So, not collecting blood sample, would not be fatal to the prosecution case.

14. The third contention raised as above is regarding the interested witnesses. It is an established principle of law that in all cases the independent witnesses cannot be insisted upon. Therefore, the rule of law is where there are interested witnesses, their evidence must be appreciated carefully and taking into account the attendant circumstances of the prosecution case. In this case firstly, the possibility of having independent witnesses can be ruled out in view of the manner in which this incident is occurred. Secondly, it must be born in mind that no third party normally would interfere and intervene in crime of such type, which may be considered by the villagers to be a personal affairs of the parties

concerned. All that is required is to appreciate the evidence of related witnesses carefully and so appreciating a conclusion should be drawn as to whether such witnesses inspire confidence and credibility or whether evidence of such witnesses are tainted. Now, going through the evidence of injured witness at Exh.19 Samat Mala Parmar and one more witness at Exh.20 Saga Mala, it is clear that the evidence of both the witnesses do not suffer from any infirmities. Nothing could be brought out in the examination in cross to allege against any of these witnesses that the credit worthiness of any of the witnesses is doubtful. In this view of the matter, all the three contentions raised by the appellant accused must be ruled against the accused in view of the overwhelming oral evidence, which is fully supported the medical evidence.

15. In this view of the matter, the Appeal filed by the accused against their conviction i.e. Criminal Appeal No. 377 of 1994 is also devoid of merits and required to be dismissed.

16. In the result, both the Appeals i.e. Criminal Appeal No. 377 of 1994 and Criminal Appeal No. 503 of 1994 are dismissed.

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